

In The United States District Court  
For The Southern District of Texas  
Houston Division

McCollum v. Livingston, 2017 U.S. Dist. Lexis 19602

United States Courts  
Southern District of Texas  
FILED

AUG 31 2023

Civil Action No. 4:14-CV-3253

Nathan Ochser, Clerk of Court,

Honorable Judge Keith P. Ellison  
to The Honorable Judge of Said Court;

Complaint Affidavit

I, Michael Dean Perry DOB. 1838827 am over the age of 18 years,  
of sound mind, capable of making this affidavit, and personally  
acquainted with the facts stated herein;

I am currently incarcerated in the Texas Department of Criminal Justice  
at the Mc Connell Unit, 3001 S. Emily Drive, Beeville, Texas 78102  
That's right, a prisoner in the dubious Texas prison system! A very  
hot prison system; complete with no Air-Conditioning for general  
population! There are of course specific areas (Respite) that are  
Air-Conditioned; Like the infirmary, library/school house, Garment

Factory, and of course (1) one building AKA The Wardens Office! Not to forget, 12 Building where the Air-conditioned-Medical beds are for very sick inmates, I believe!

Perry avers that he will attempt to be brief, logical, and coherent with the writing of this affidavit. But begs forgiveness at the poor craftsmanship of this affidavit whereas, us lowly prisoners on 3 Bldg, C Wing, 3 section are at this time, confined to our "Hot Little Cells" (105°?) (8/27/2023) with absolutely no access to respite, or even a cold shower! There have been no wellness checks, or any of the other procedures outlined in AD-10.64. The humidity is extremely high at this time as well! Of course we prisoners have no way in which to check the temperature or humidity levels, but are able to listen to weather reports on our radios in our Hot Little Cells! And the temperatures and humidity levels are consistent with the findings in the the Collier case aforesaid! And of course, these conditions are aggravated due to being arbitrarily and erroneously confined to our cells with absolutely no access to respite and/or even a cold shower! Indeed, Perry has begged and pleaded for a cold shower and access to respite all day today while writing this affidavit, to no avail! Even the Mexican prisoner that were let out of their Hot Little Cells under the guise of providing us that are confined to our cells, drinking (cold) water, have only provided Perry with (2) two bottles of cold water all day long! (It's now 5:30pm!) And of course being denied respite all day long as well! Deliberate Indifference! 8th Amendment!

Plaintiff's must show both a genuine question of fact regarding the substantial risk, and a genuine dispute regarding Defendant's deliber-

ate indifference to these conditions. Deliberate Indifference is defined as a failure to act where prison officials have knowledge of a substantial risk of serious harm to inmate health or safety. Farm v. S.I.U.S. at 832, 829. Again, see AD 10.04 Temperature Extremes in Texas. This document outlines the procedures that Texas Wardens, Supervisors, and guards should follow. The document describes, inter alia, symptoms of heat stroke, heat cramps, and heat exhaustion, with guidance for how to treat these ailments. (id. at 19-21) Of which Perry avers that none of these procedures are being followed at this time at the Connell Unit. Hence, the writing of this affidavit. Perry avers that writing step 1 and step 2 grievances have been ineffective and have resulted in myriad acts of harassment and retaliation of which Perry will provide this honorable court strict proof thereof in the form of exhibits, to be included with this affidavit. And/or, jurisdictional proof. As an aside;

Perry avers that based on information and belief, he has standing to write and to file this Complaint Affidavit. Whereas, Perry is Aged and Disabled (63 years of age) And in the free world Perry was diagnosed with "Degenerative Disc Disease" and "Agoraphobia Social Panic Disease", and Perry received a disability payment of \$70.00 per month (2012) Food Stamps and Medicaid. Sorry, "Disorder", I am very Hot and Sick with Heat Exhaustion while attempting to write this affidavit. No guards and/or medical personnel have been to check on us lowly prisoners since they counted us at about 1:00 PM (8/27/2023) and it's currently 6:13 PM. Indeed, Nonetheless, I will attempt to complete this affidavit before I suc-



comb to the excessive heat.

I am a qualified individual with a disability! See Americans with Disabilities Act and Rehabilitation Act. §201, 42 USC §12131 §101(9) USC §12111(9) Rehabilitation Act of 1973 §504, 29 USC §794 See *Braden v. Abbott*, 524 U.S. 624, 632 118 S. CT. 2196, 2202 (1998) Whereas, I am an individual with a disability, 42 USC §12112(a) Notwithstanding the fact that as according to TDCJ Policy as outlined in the PD-22, A, Rule 21 I am of a protected class due to my disabilities, yet I am routinely discriminated against, and retaliated against for attempting to exercise those rights. Even my 1<sup>st</sup> Amendment rights to petition the government for redress of grievances! And my 5<sup>th</sup> and 14<sup>th</sup> Amendment rights to due process of law and equal protection of law!

Perry avers that this Complaint affidavit is NOT a lawsuit, and is only intended to bully apprise this honorable court of the deliberate indifference to this Court's ruling and the blatant refusal and/or failure of TDCJ to follow its directive. Placing mine and other prisoners lives in peril and/or jeopardy. If this honorable court decides to take corrective action, well, that would be greatly appreciated.

To be sure, recently P.A. Malvika Goyal prescribed Perry Hydrochlorothiazide 12.5 MG, and without Perry's knowledge or consent. And just like in the case at bar, hydrochlorothiazide, was known by UTM B to be a diuretic, to impede the body's ability to thermoregulate, and as such to increase the risk of heat-related illness!! Although UTM B contends that McCollum did not take the medication while he was incarcerated, a fact question remains as to whether this is true. Indeed!!

And Perry avers that he has never, ever taken hydrochlorothiazide

in The Free World and/or Dr. Perry avers that he has never been obese, and the alleged hypertension Perry may have is treated with Telazosin 2 MG and Lisinopril 10 MG. AKA High Blood Pressure. Perry avers that he ceased taking the hydrochlorothiazide of his own accord after reading this case. In fact, the Head Pharmacist Robert Sandmann had to take over my blood pressure treatment due to the fact that JTB employees at the Connell Unit could not manage my High Blood Pressure. To be sure, Goyce had no business prescribing the hydrochlorothiazide without first consulting Pharmacist Sandmann and Perry. (See Exhibit I Pharmacy-Hypertension).

Furthermore, Perry avers that although he has never been obese or even overweight, however, due to the stimulus money he managed to increase in weight from 155 lbs up to 183 lbs and that contributed to the high blood pressure, indeed. Perry was able to lose at or about 15 lbs on his own volition and as a result Perry's blood pressure decreased accordingly, and as such, Perry had to request that the health care provider decrease the milligrams of both the Telazosin 2 MG and Lisinopril 5 MG. Hence, there would not have been a need for the hydrochlorothiazide. Especially since I have two no temperature extreme restrictions. Perry was previously taking 10 MG Telazosin and 30 MG Lisinopril, before the weight loss. Notwithstanding the fact that Perry previously had a Heat Stroke and Grand Mal Seizure while at work in the Free World. Even receiving a Workman's Comp. Settlement. I even had to take anti-seizure medication called Dilantin. All on Record!

On June 21, 2023 we and a half a dozen prisoners tried to go to Respite at 3 Bldg Front Desk, but SGT. Gonzalez had us line up against a wall and wait for a very long time in the heat. Then SGT. Gonzalez walked at or about

(20) <sup>①</sup>Twenty of us heat exhausted prisoners to the 10 Bldg Respite Area ALCA Infirmery. There is a cage inside with 5 benches that hold 20 prisoners and it was already full. We were made to stand in a line and wait our turn in the cage. Well, me and another prisoner got really sick with heat exhaustion and I became very dizzy and faint, and we both sat on the floor. Clo Sanchez called in an (OCS) Offender Control Situation and along came SGT. Perez with hand cuffs. When he saw that I was collapsed on the floor, he left for a minute and returned with a wheel chair and order me to get up off the floor and get into the wheel chair, that he was going to take me to 12 Bldg Respite where I could lay down. But instead, he locked me up in a 2 FT X 2 FT cage. I then had a seizure and came to on the floor in that cage. I kept on begging for help, but was simply ignored. My water bottle remained empty the entire time. And I asked for a drink of water repeatedly, to no avail. I was finally released from that cage at or about 8:00 PM. No EMT Aid was ever offered. Not even at the dubious Infirmery. It's no wonder so many inmates have died in TDCJ from Heat Exhaustion. Indeed, it's only by God's grace that Perry did not die from Heat Stroke, then and now. (<sup>①</sup> 5:00 PM until 8:00 PM)  
(See the Exhibits No's 1 Through 8.)

Exhibit #1. Pharmacy - Hypertension Date: 8/19/2023

Exhibit #2. Medical Restrictions No Temperature Extremes

Exhibit #3. Fraudulent Minor Disciplinary Case in Retaliation for Seeking Respite!

Exhibit #4. Step 1 Guidance (copy) Denied Respite!

Exhibit #5. Step 1 Guidance - Retaliation for Seeking Respite and Minor Case (Copy!)



Exhibit #6, Step 1 grievance Heatstroke 6-21-2023, No Medical Treatment! (copy)  
 Exhibit #7, Step 1 grievance Denied Respite, or even a Cold Shower (copy)  
 Exhibit #8, Step 1 grievance Retaliation for Respite, denied rest room break (copy)  
 Exhibit #9, I-60 Request to Open Records to Review changes (B. No Walking 40 yards)

Perry avers that he has now been denied Respite since 8/21/2023! The same date he was written the retaliatory disciplinary case for seeking respite! Whereas, prison officials moved an obviously sick man on to our wing, C wing on the very same date I got the fraudulent case! 8/21/2023! Coincidence? Then just two days later they removed him and locked us down under the guise of a quarantine for Covid-19! Oh, really? UTM-B employees didn't first test the obviously ill man before arbitrarily moving him on to C wing? Yes, I filed a Step 1 grievance on this issue, and in great detail! Low and Behold, C wing was scheduled for Commissary on 8/21/2023, but that was arbitrarily changed to 8/23/2023, then changed to a \$30.00 spend (Medical Spend) on 8/25/2023! Indeed, the last time we (C wing) went to Commissary was on 7/31/2023, \$105.00! To be sure, no Guards and/or UTM-B employees are what you would call, scared of contracting Covid-19 whereas, none of them are wearing Face Masks! Low and Behold, on 8/28/2023 at 5:45 PM the first guard shows up wearing a face mask! But only after Perry filed the Step 1 grievance! Coincidence? Albert Einstein, the famous physicist: formulator of the Theory of relativity! Was once quoted that, 'Coincidences are cause for investigation!'

The quarantine is for (10) ten days, unless, of course, someone is actually tested for Covid-19 and test positive! We haven't been tested yet, only

our temperatures have been taken everyday. However, considering the past enormous and fallacious conduct of the Council Unit employees, both TDCJ and UTMBS, this writ writer has no doubt that they have yet another trick up their proverbial sleeve's.

Perry avers that there are in fact two Lawazos AKA twins. LT. Adam Lawazos wrote the Disciplinary Hearing Results Notification for the fraudulent case that he conducted the hearing at the cell door-3C55B and that I never have received. And then on 8/27/2023 at 8:30 AM on 3C wing, Capt. Aaron Lawazos informed Perry that he didn't believe that I did anything wrong, because I never get into trouble, and that he would take care of the case and not to worry, you have my word. Perry avers that he has know way at this time to determine how true that statement is and/or was. Only time will tell.

Perry avers that if this honorable court determines that Perry is indeed a class member AKA Plaintiff, and that this affidavit was (prelit, please direct the clerk to give notice, and that this honorable court take remedial actions to ensure us heat restricted, Aged and Disabled prisoners have access to Respite, Cold Showers, Oh, and Commissary. And to be free from Harassment and Retaliation for seeking, interalia, Respite and Cold Showers and First Aid.

Further Affidavit Sayerth Not.

Respectfully Submitted,

Date Filed: 8/29/2023

Michael Dean Perry #1838827



Unsworn Declaration

I, Michael Dean Perry DCT No 1838827 being presently incarcerated in the Texas Department of Criminal Justice at the Connell Unit 30015, Emily Drive, Beeville, TX 78102 Declare under penalty of perjury that the above and foregoing is true and correct.

Executed on this the 29<sup>th</sup> day of August, 2023

By the Affiant Michael Dean Perry DCT No 1838827

Certificate of Service

I, Michael Dean Perry DCT No 1838827 do hereby certify that a true and correct copy of the above and foregoing Complaint Affidavit, Unsworn Declaration, and Certificate of Service have been served by placing same in the U.S. Mail, First Class postage prepaid on this the 29<sup>th</sup> day of August, 2023

By the Affiant Michael Dean Perry DCT No 1838827

Return Service Requested, Please!

Thank You!